

General Information Letter: Request to use separate accounting that does not state either how the statutory apportionment formula fails to fairly reflect business activities within Illinois or how separate accounting is reasonable cannot be granted.

October 3, 2003

Dear:

This is in response to your letter dated September 25, 2003, in which you request permission to use separate accounting rather than the statutorily-mandated apportionment formula, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

Per requirements of the Illinois Income Tax Regulation 100.3390, the alternative apportionment formula we are requesting is "Separate Accounting". We used this method in 2002 records, and our net result was a loss of (\$481.43) for Illinois and a loss for Wisconsin of (\$3255.52). Our gross sales percentages were WI 36% & IL 65%. In the IL 1065 apportionment formula, when we apply 64% times our total net loss for 2002 of (\$3736.95), the IL portion becomes (\$2391.65). This is obviously not close to an accurate reflection of the real amount from the separate accounting method that we actually used. We are requesting to use separate accounting apportionment formula on our IL 1065 as well as on our records. Then the result will not be distorted.

## **Response**

Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

Your request contains no evidence that the statutory apportionment formula does not fairly represent the extent of the company's business activities in Illinois or that your method of separate accounting does produce a reasonable result. As provided in 86 Ill. Adm. Code Section 100.3390(c), merely showing that your proposed method produces a different result is insufficient to support a grant of relief.

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. A petition filed September 25, 2003 will allow a taxpayer to use the requested method on original returns due on or after January 23, 2004, if granted.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390. If you have any questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton  
Deputy General Counsel – Income Tax